

1
2
3
4
5
6
7
8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 ROBERT LAMAR BALL,
10 Plaintiff,

No. C 13-01483 SBA (PR)

ORDER OF DISMISSAL

11 v.
12 M. E. SPEARMAN, et al.,
13 Defendants.
14

15 On February 3, 2014, the Court issued an Order Dismissing Amended Complaint with
16 Leave to Amend. Specifically, the Court granted Plaintiff twenty-eight days from the date of
17 the Order to file a second amended complaint to allege facts sufficient to state a cognizable
18 constitutional claim. Plaintiff was warned that the failure to timely file a second amended
19 complaint would result in the dismissal of this action under Federal Rule of Civil Procedure
20 41(b).

21 The deadline for Plaintiff to file his second amended complaint has passed, and, to
22 date, Plaintiff has not filed an amended pleading. Taking into account the salient factors set
23 forth in Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992), the Court finds that
24 dismissal is warranted under Rule 41(b).¹ See Yourish v. Cal. Amplifier, 191 F.3d 983, 989,

25
26
27
28

¹If and when Plaintiff is prepared to pursue his claims, he may file a new civil rights action. The limitations period to file a § 1983 action in California is two years, but it is tolled for up to two years during a continuous period of incarceration. See Silva v. Crain, 169 F.3d 608, 610 (9th Cir. 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the limitations period for filing a § 1983 action in California is one year); S.B. 688 (amending Cal. Civ. Proc. Code § 340(3) and adding § 335.1 to establish two-year residual limitations period for personal

992 (9th Cir. 1999) (affirming dismissal of action following plaintiff's failure to amend complaint after receiving leave to do so, where the interests of expeditious resolution of litigation, the court's management of its docket, and avoiding prejudice to defendants favored dismissal). Accordingly,

IT IS HEREBY ORDERED that the amended complaint in the above-captioned action is DISMISSED. The Clerk of the Court shall enter judgment, terminate all pending motions and close the file.

IT IS SO ORDERED.

DATED: April 18, 2014


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

injury actions); Cal. Civ. Proc. Code § 352.1(a) (providing for an additional two years of tolling during a period of continual imprisonment).